

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

FOSTER POULTRY FARMS,

Employer,

and

MARIA ARACELI LOPEZ,

Petitioner,

and

UNITED FOOD AND COMMERCIAL  
WORKERS 8-GOLDEN STATE,

Union.

Case No. 32-RD-230993

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**EMPLOYER’S REQUEST FOR SPECIAL PERMISSION TO APPEAL THE ACTING  
REGIONAL DIRECTOR’S ORDER DIRECTING HEARING AND NOTICE OF  
HEARING ON OBJECTIONS AND “ERRATA”, APPEAL, AND MOTION TO STAY**

In the instant situation, among other objections to the results of a decertification election, the Union objects on the grounds that “unnamed supervisors” (i) had knowledge of certain types of employee conduct, and (ii) made illegal promises during the election period. Although the Union apparently provided the Region with the names and job titles of some supervisors who the Union contends engaged in improper conduct, the Union did not provide any identifying information (names, job titles, physical description, etc.) of the individuals the Union only refers to as “unnamed supervisors.”

As a result of the Union’s failure to supply identifying information, the Acting Regional Director could not have discharged her duty to determine whether the objections warranted hearing. Further, if the Region did know the identities of the “unnamed supervisors,” it would not provide them to the Employer. Thus, a hearing involving the conduct and knowledge of the

“unnamed supervisors” is inappropriate and the Employer has been denied due process to prepare for and defend itself at the Hearing.

Employer Foster Poultry Farms (“Employer”), by its attorneys, pursuant to NLRB Rules and Regulations Section 102.26, hereby (i) makes this request for special permission to appeal to the NLRB, (ii) appeals the Acting Regional Director’s Order Directing Hearing And Notice Of Hearing On Objections issued on December 26, 2018, supplemented by an Errata dated December 27, 2018, and the Region’s failure and/or refusal to provide certain information for the Hearing, and (iii) requests that the Objections Hearing scheduled for Wednesday January 9, 2019, be stayed. In support hereof, the Employer states as follows:

### **PROCEDURAL BACKGROUND**

United Food and Commercial Workers Union 8 - Golden State (“Union”) represents a bargaining unit at the Employer’s Cherry Facility located in Fresno, California. On November 14, 2018, Maria Araceli Lopez, an employee and bargaining unit member, filed the above-captioned Decertification Petition. Pursuant to a Stipulated Election Agreement, on December 12 and 13, 2018, an election was held. According to the Tally of Ballots, out of a total of 1,429 eligible voters, 502 votes were cast for and 659 votes were cast against, with 29 challenged ballots.

On December 20, 2018, the Union filed its Objections to Election (“Objections”), (Exhibit A). On December 26, 2018, Acting Regional Director Christy Kwon (the “ARD”) issued an Order Directing Hearing And Notice Of Hearing On Objections (“Order and Notice”), (Exhibit B). Other than including a copy of the Objections, the Order and Notice were bereft of any facts whatsoever.

On December 27, 2018, the ARD issued an Errata (“Errata”) to add two paragraphs purportedly omitted from her Order and Notice, (Exhibit C). The Hearing is scheduled to begin on Wednesday January 9, 2019 (two days from now) in Fresno, California.

The Errata provided limited additional information regarding the Objections and the ARD’s purported reasoning for issuing the Order and Notice, and contained the names and/or job classification of several supervisors who allegedly engaged in objectionable conduct. However, the Errata contained a glaring omission. Specifically, in the last two paragraphs of the Errata, the ARD stated that (i) “unnamed supervisors” had knowledge of certain types of employee election campaign conduct and (ii) other “unnamed supervisors” made an improper promise.

Although the Errata indicates that the Union’s offer of proof stated that Union witnesses would be able to testify about the events and the supervisory and confidential status of certain of the supervisors named (by actual name or job title) in the Errata, the Errata does not either (i) identify (by name or job title) the “unnamed supervisors” or (ii) state that witnesses would testify as to their identify. Exhibit C at p. 1.

On January 2, 2019, the Employer, by letter to the ARD, from the undersigned counsel, requested the names of the “unnamed supervisors” (Exhibit D). In response to the letter, the undersigned engaged in an email exchange with the Field Examiner Nicholas Tsiliacos (the “FE”) at Region 32, the Field Examiner handling this Case (Exhibit E). In a January 3, 2019 12:30 pm email from the FE, the FE states that he has requested the names of the “unnamed supervisors” from the Union, thereby implying that the Region did not have the names. After the undersigned followed up on the request, on January 4 at 1:50 pm, the FE responded that the Union was not willing to provide the names of the “unnamed supervisors prior to the Hearing.

Because the Region has refused to provide the names of the “unnamed supervisors”, the Employer has filed this request to the Board.

### **ARGUMENT**

Under the circumstances here, the Employer is being asked to defend itself without even knowing which of its supervisors allegedly engaged in improper conduct. And, based on the offer of proof as to what the Union witnesses can testify to, it appears that this information will not even be forthcoming at the Hearing. So, at the end of the Hearing, we may have evidence that some people allegedly engaged in inappropriate conduct, but will not know who they are or if they are supervisors. Even if the testimony of the Union witnesses is more specific than claimed in the Errata, the Employer will have no way to prepare for and defend against these claims, which creates an obvious due process problem.

#### **A. Applicable Standards**

Section 102.69(c)(1)(ii) of the NLRB’s Rules and Regulations states as follows:

(ii) Notices of hearing on objections and challenges. If timely objections are filed to the conduct of the election or to conduct affecting the results of the election, and the regional director determines that the evidence described in the accompanying offer of proof could be grounds for setting aside the election if introduced at a hearing, . . . the regional director shall transmit to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided) a notice of hearing before a hearing officer at a place and time fixed therein.

However, in deciding to order a hearing, the regional director must make her determination based upon an analysis of the “evidence described in the . . . offer of proof” accompanying the objections. 29 CFR § 102.69(c)(1)(i).

In its comments related to issuance of the final rule about representation election procedures, the Board made several statements relevant to the issue at hand. Of particular relevance here, the Board stated:

The change is based on the view that objections to a secret-ballot election should not be filed by any party lacking factual support for the objections and, therefore, a filing party should be able to describe the facts supporting its objections at the time of filing.

. . .

And a regional director cannot evaluate the objections until it receives the objecting party's supporting evidence. . . .

In sum, requiring the objecting party to simultaneously serve a copy of its objections on the other parties and to simultaneously file an offer of proof with its election objections will provide the other parties with the earliest possible notice of the objections.

79 Fed. Reg., Vol. 769, No 240 at pp. 74411-74412 (Dec. 15, 2014).

As such, the regional director is tasked with examining evidence in support of objections and the authority to investigate objections to determine if a hearing is warranted. *Id.* at p. 74412.

Further, the requirement of immediate notice of the objections to the non-objecting party is to provide the opportunity for that party to investigate and prepare for the hearing where the objecting party will have the burden of proof:

In cases where the objections allege that the election should be set aside because of employer misconduct, the union has to prove that the employer was responsible for the misconduct. Under the revised schedule, even if the notice of hearing issues 1 or more days after the objections are filed, the nonobjecting party should still have close to 2 weeks to investigate the objections and prepare its response unless, of course, the parties agree to an earlier hearing date. Thus, under the amendments, as under the prior rules and case law that the amendments leave undisturbed, the party seeking to overturn the election must file its objections within 7 days of the tally, and the objections must contain a specific, nonconclusory statement of the reasons therefor so as to provide notice of the alleged objectionable conduct. The nonobjecting party will promptly learn of the filing of objections, because the objecting party will now be required to simultaneously serve a copy of its objections on all parties when it files its objections with the regional director (and the regional director will continue the practice of furnishing a copy as well).

*Id.* at p. 74415.

Further, in rejecting the employer's argument that two weeks was not enough to prepare for an objections hearing, the final regulation states that timing should not be a problem because "In most cases, given the relatively small median bargaining unit size in recent years, there is

likely to be only a relatively limited number of potential witnesses with knowledge of the relevant facts. The employer should have ready access to its supervisors, managers, and agents.” *Id.* at p. 74415.

Critically, with regards to post-election hearings, the Board has determined that the overriding issue is one of due process. As stated in the Casehandling Manual, “Since there is no statutory requirement for a hearing on objections, the primary concern of a regional director is to afford due process to the parties.” NLRB Casehandling Manual, Part Two Representation Proceedings, § 11395.1 (2017) (emphasis added.).

As discussed below, the failure to provide the names of the “unnamed supervisors” violates the Board’s rules and principles identified above and denies the Employer due process in this case.

#### B. Analysis

The Region’s failure to have and/or disclose the names of the “unnamed supervisors” violates the Board’s Rules, its own pronouncements regarding the relevant rules, and the Employer’s guarantee of due process. At the outset, based on the FE’s emails, it must be concluded that the Region does not have or know the identity of the “unnamed supervisors.”

As noted above, in the instant circumstance “the union has to prove that the employer was responsible for the misconduct.” 79 Fed. Reg. at p. 74415. However, the ARD could not make a determination of whether there is any evidence by which the Union can meet its burden if the Union does not provide the Region with the requisite information. In the instant circumstance, the Union failed to provide names and positions of the individuals who allegedly are supervisors and engaged in the conduct. If the Union has not provided this basic information in its Objections and offer of proof, the ARD could not have discharged her duty to determine if

there is substantial supporting evidence. Hence, the relevant Objections should be rejected outright and not be a subject at Hearing.

Further, the denial to provide the names of the supervisors in the Objections or upon request denies the Employer here its fundamental right of due process -- codified by the Board at Section § 11395.1 of the Casehandling Manual (quoted above). The Employer is a 24 hour per day/7 day per week operation. The voting unit is not small; it has more than 1,400 bargaining unit employees, with potentially 50 or so managers and supervisors. Accordingly, the Employer does not, as contemplated by the regulations, have a relatively limited number of potential witnesses with knowledge of the relevant facts, and, thus ready access to its supervisors, managers, and agents. *Id.* at p. 74415.

In combination with the large number of potential witnesses and no way to identify whose conduct may be at issue, the Employer will be severely prejudiced if it has to go forward without knowing the identity of the persons accused of engaging in inappropriate activities.

Without the names of the “unnamed supervisors” it cannot “investigate the objections and prepare its response” as the Board stated it has the right to do. 79 Fed. Reg. at p. 74415. In addition, if a name is or names are provided at the Hearing (presumably during testimony), the Employer will be denied the effective right to respond. It will not have been given the opportunity to determine if the individual was in fact a supervisor under the Act, investigate and learn that individual’s side of the story, or prepare for examination of the Union’s witnesses. Most importantly, it will not know who that alleged supervisor is to have him/her available to testify to rebut the allegations, and likely will be unable to call the person because he or she may be working, sleeping or otherwise unavailable. In short, the Employer has been denied its rights to due process at the Hearing.



## **CONCLUSION**

WHEREFORE, for the reasons set forth herein, the Employer requests that the objections Notice of Hearing be revoked, the requested information be provided to Employer, and/or the Hearing scheduled for Wednesday January 9, 2019 be stayed, and for such further relief as may be proper.

**January 7, 2019**

Respectfully submitted,

**FOSTER POULTRY FARMS**

By its attorneys,

/s/ Jeffrey A. Berman

Jeffrey A. Berman

(jberman@seyfarth.com)

SEYFARTH SHAW LLP

2029 Century Plaza East, Suite 3500

Los Angeles, California 90067

Telephone: (310) 277-7200

Facsimile: (310) 4201-5219

Attorneys for Employer

## **CERTIFICATE OF SERVICE**

I do hereby certify that I caused a true and correct copy of the foregoing EMPLOYER'S REQUEST FOR SPECIAL PERMISSION TO APPEAL THE ACTING REGIONAL DIRECTOR'S ORDER DIRECTING HEARING AND NOTICE OF HEARING ON OBJECTIONS AND "ERRATA", APPEAL, AND MOTION TO STAY to be served upon the following, via the NLRB's e-filing system and email on this 7th day of January, 2019:

Executive Secretary (via e-file)  
National Labor Relations Board  
1015 Half Street, S.E., Room 4012  
Washington, D.C. 20003

Cristy Kwon  
NLRB Region 32  
Email: [christy.kwon@nlrb.gov](mailto:christy.kwon@nlrb.gov)

Nicholas Tsilacos  
NLRB Region 32  
Email: [nicholas.tsilacos@nlrb.gov](mailto:nicholas.tsilacos@nlrb.gov)

Joseph Ciotti  
United Food and Commercial Workers 8-  
Golden State  
Email: [jciotti@ufcw8.org](mailto:jciotti@ufcw8.org)

W. David Holsberry  
McCracken, Stemerman & Holsbery, LLP  
Email: [wdh@msh.law](mailto:wdh@msh.law)

David L. Barber  
McCracken, Stemerman & Holsberry,  
LLP  
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/s/ Jeffrey A. Berman  
Attorney for Employer

# EXHIBIT A

## **BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Re: Foster Poultry Farms  
Case 32-RD-230993  
**Union's Objections to Election**

Pursuant to NLRB Rules and Regulations § 102.69, United Food & Commercial Workers Union 8 – Golden State (“Union”) files the following objections regarding conduct that affected the results of the election held at Foster Poultry Farms, Cherry Facility, in Fresno, California on December 12 and 13, 2018.

### **1. Disparate treatment of employees and disparate enforcement of solicitation rules.**

The Employer disparately enforced its rules about solicitation in working areas on working time in a way that favored anti-union employees and discriminated against pro-union employees. Specifically, it granted time to anti-union employees to campaign in favor of decertification on company time, and allowed anti-union employees to move freely about the plant to talk about decertification with and give anti-union leaflets to other employees who were working. At the same time, the Employer maintained an otherwise strict policy against employees discussing union issues during working time or leaving their stations and speaking with working employees when not on a break.

### **2. Supervisor assistance in gathering signatures for decertification petition, and signing the petition.**

Supervisors, specifically Quality Control inspectors, assisted the Petitioner in gathering signatures for the decertification petition. Some of the inspectors signed the petition themselves.

### **3. Supervisor threats, coercion, and polling.**

Supervisors, specifically Quality Control inspectors, threatened or coerced employees who said they would vote for the Union and polled employees about how they would vote in the election.

### **4. Employer's payments to anti-union employees.**

The Employer discriminated in favor of anti-union employees by paying their wages for the time they spent filing the petition and attending the pre-election hearing in this case.

**5. Employer's threat to withhold promised bonus.**

The Employer, through its supervisors, threatened employees that they would not receive a previously promised ratification bonus, which had been agreed by the Employer and Union, unless they voted No in the election.

**6. Employer's unilateral withholding of bonus.**

Without bargaining over the matter, the Employer withheld a bonus that was supposed to be paid upon ratification of the new CBA; further, the Employer announced this unilateral decision to all employees in a memorandum.

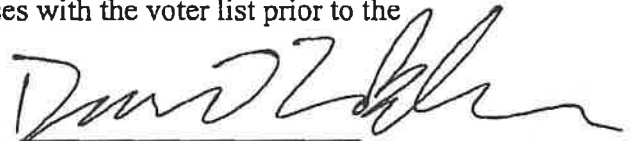
**7. Atmosphere of threats and fear.**

The Petitioner and her agents or third parties created an atmosphere of physical threat and fear when the Petitioner invited Union representative Joe Ciotti to meet the Petitioner in the Employer's parking lot after work, then a number of supporters of the Petitioner lay in wait in a dark area of the parking lot when Ciotti arrived and threatened him. The Petitioner later spread false rumors about this incident throughout the plant. The Petitioner and/or third parties made threats to employees about supporting the Union, including making threatening phone calls to an employee who had expressed interest in serving as a shop steward. Many employees expressed fear of consequences from anti-union employees or third parties if they were to support the Union or even speak with Union representatives.

**8. Failure to provide required information with voter list.**

The Employer did not provide employee email addresses with the voter list prior to the election.

Date: December 20, 2018



David L. Barber  
McCRACKEN, STEMERMAN &  
HOLSBERY, LLP

*Attorneys for UFCW 8-Golden State*

**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO**

I am employed in the city and county of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: 595 Market Street, Suite 800, San Francisco, California 94105.

On December 20, 2018, I served a copy of the following document(s) described as:

***UNION'S OBJECTIONS TO ELECTION***

on the interested party(ies) in this action as follows:

PARTY	POSITION	SERVICE VIA
Nicholas Tsilacos <a href="mailto:nicholas.tsiliacos@nrlrb.gov">nicholas.tsiliacos@nrlrb.gov</a>	National Labor Relations Board	Electronic Service
Maria Archeli Lopez 6258 S. Ivy Avenue Fresno, CA 93706 <a href="mailto:lopezmiramontes5@gmail.com">lopezmiramontes5@gmail.com</a>	Petitioner	USPS and Electronic Service
Scott Shows Foster Farms 2960 South Cherry Street Fresno, CA 93706 <a href="mailto:scott.shows@fosterfarms.com">scott.shows@fosterfarms.com</a>	Employer	USPS and Electronic Service
Christian J. Rowley Alison Loomis Seyfarth Shaw 560 Mission Street, Suite 3100 San Francisco, CA 94105-2930 <a href="mailto:crowley@seyfarth.com">crowley@seyfarth.com</a> <a href="mailto:aloomis@seyfarth.com">aloomis@seyfarth.com</a>	Counsel for Employer	USPS and Electronic Service

- ☒ **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in San Francisco, California, in a sealed envelope with postage fully prepaid.
- ☒ **BY ELECTRONIC SERVICE:** By transmitting via e-mail the document(s) listed above to the e-mail addressed set forth above on this date.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing  
2 is true and correct.

3 Executed on December 20, 2018, at San Francisco, California.

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7 James Fabian  
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UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 32  
1301 Clay St Ste 300N  
Oakland, CA 94612-5224

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (510)637-3300  
Fax: (510)637-3315

December 21, 2018

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[lopezmiramontes5@gmail.com](mailto:lopezmiramontes5@gmail.com)

**Re: Foster Poultry Farms  
Case 32-RD-230993**

Dear Gentilepersons:

Enclosed is a copy of the objections to the election in the above matter that United Food and Commercial Workers 8-Golden State filed on December 20, 2018.

Pursuant to Section 102.69 of the Board's Rules and Regulations, if I determine that the evidence described in the objecting party's offer of proof could be grounds for setting aside the election if introduced at a hearing, I will transmit to the parties and their designated representatives a Notice of Hearing scheduling a hearing before a hearing officer. The hearing will be set for January 3, 2019, or as soon as practicable thereafter, unless the parties agree to an earlier date or I consolidate this proceeding with an unfair labor practice proceeding before an administrative law judge. The hearing will continue from day to day until completed unless I conclude that extraordinary circumstances warrant otherwise.

If you have any questions or wish to discuss this matter, please contact Field Examiner Nicholas Tsiliacos, whose telephone number is (510)671-3046.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christy Kwon", is written over a horizontal line.

Christy Kwon  
Acting Regional Director

Enclosure: Copy of Objections

# EXHIBIT B

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**FOSTER POULTRY FARMS**

**Employer**

**and**

**Case 32-RD-230993**

**MARIA ARACELI LOPEZ**

**Petitioner**

**and**

**UNITED FOOD AND COMMERCIAL WORKERS  
8-GOLDEN STATE**

**Union**

**ORDER DIRECTING HEARING AND  
NOTICE OF HEARING ON OBJECTIONS**

Based on a petition filed on November 14, 2018 and pursuant to a Stipulated Election Agreement, an election was conducted on to determine whether a unit of employees of FOSTER POULTRY FARMS (the Employer) wish to be represented for purposes of collective bargaining by UNITED FOOD AND COMMERCIAL WORKERS 8-GOLDEN STATE. That voting unit consists of:

All full-time and regular part-time maintenance, production, eviscerating, sanitation and live haul employees employed by the Employer at its facility located at 2960 S. Cherry Ave, Fresno, CA; excluding office clerical employees, guards, and supervisors as defined in the Act.

The tally of ballots prepared at the conclusion of the election shows that of the approximately 1,424 of eligible voters, 502 votes were cast for and 659 votes were cast against the Petitioner, with 29 of challenged ballots, a number that is not sufficient to affect the results of the election.

**THE OBJECTIONS**

On December 20, 2018, UNITED FOOD AND COMMERCIAL WORKERS 8-GOLDEN STATE (the Union) filed timely objections to conduct affecting the results of the election. A copy of the objections is attached to this Order.

### **CONCLUSION AND ORDER**

I have concluded that the evidence submitted by the Union in support of its objections could be grounds for overturning the election if introduced at a hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the objections.

### **NOTICE OF HEARING**

Starting at 9:00 a.m. on January 3, 2018, at a location to be determined in Fresno, California the hearing on objections as described above will be conducted before a hearing officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated: December 26, 2018

/s/ Christy Kwon

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Christy Kwon  
Acting Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street Suite 300N  
Oakland, CA 94612-5224

# EXHIBIT C

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**FOSTER POULTRY FARMS**

**Employer**

**and**

**Case 32-RD-230993**

**MARIA ARACELI LOPEZ**

**Petitioner**

**and**

**UNITED FOOD AND COMMERCIAL WORKERS  
8-GOLDEN STATE**

**Union**

**ERRATA**

An Order Directing Hearing and Notice of Hearing on Objections issued on December 26, 2018 (Order). The following two paragraphs were inadvertently omitted under the section titled "The Objections" and I hereby now include them in the Order:

The Union filed a timely offer of proof in support of its objections. In support of objections 1, 2 and 3, the Union proffered the names of seven bargaining-unit employee witnesses and two Union representatives who could testify that employees were disparately allowed to: a) electioneer against the Union, b) solicit signatures for the decertification petition, and c) distribute anti-union campaign literature, all during working time while unnamed supervisors and human resources representative Becky Reyes had knowledge of this. One of these bargaining unit employee witnesses could testify that Quality Control Inspector Ramona Valle polled bargaining unit employees about how they intended to vote; another bargaining unit employee witness could testify that Quality Control Inspector Maria Flores threatened and coerced employees about their support for the Union; and yet another of these bargaining unit employee would testify that Quality Control employees and inspectors solicited signatures for the decertification petition and/or signed the petition. The Union also proffered witnesses who could testify regarding the Section 2(11) supervisory status and/or confidential employee status of Quality Control employees.

In support of objections 4 and 7, the Union provided names of six Union representatives who could provide testimony regarding wages being paid to certain employees during the filing of the decertification petition and pre-election hearing in this matter, and regarding threatening behavior by Petitioner and Petitioner supporters. In support of objection 5, the Union proffered the names of five employees who would testify that unnamed supervisors told them they would get the ratification bonus if the Union did not represent them. In support of objections 6 and 7, the Union has identified and provided documents that it would introduce as documentary

evidence at a hearing. The objections raise substantial factual and material issues that can best be resolved at a hearing.

Dated: December 27, 2018

/s/ Christy Kwon

---

Christy Kwon  
Acting Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street Suite 300N  
Oakland, CA 94612-5224

# EXHIBIT D



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January 2, 2019

Christy Kwon  
Acting Regional Director  
NATIONAL LABOR RELATIONS BOARD, Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5224

Re: Foster Poultry Farms and Maria Lopez - Case No. 32-RD-230993


Dear Ms. Kwon:

The Region previously provided us with an Errata dated December 27, 2018 that contained the names of some of the Quality Control employees relevant to the objections hearing. However, it referenced others merely as "unnamed supervisors."

Foster Poultry Farms hereby requests the names of the "unnamed supervisors". This information is necessary to enable Foster Poultry Farms to prepare for the hearing. In addition, because the plant operates 24 hours a day, if we only learn of the identify of these individuals at the hearing, it may not even be possible to contact them.

We appreciate your immediate attention to this request.

Very truly yours,

  
Jeffrey A. Berman

ATLANTA BOSTON CHICAGO HOUSTON LONDON LOS ANGELES MELBOURNE NEW YORK SACRAMENTO SAN FRANCISCO SHANGHAI SYDNEY WASHINGTON, D.C.



# EXHIBIT E

Reply all | Delete Junk |

## Re: Foster Poultry Farms 32-RD-230993



Berman, Jeffrey A.

Yesterday, 1:30 PM

Tsiliacos, Nicholas L. <[Nicholas.Tsiliacos@nlrb.gov](mailto:Nicholas.Tsiliacos@nlrb.gov)>

Reply all |

Inbox

Label: Seyfarth - Delete Inbox after 6 months (6 months) Expires: 7/3/2019 1:30 PM

### Action Items

Nick. Two things. First any news from the union on witnesses or the need for a translator? Second, we understand that the Petitioner has several witnesses. Don't know if any of them need a translator. You may want to contact her,

Typos Courtesy Of Apple

---

**Jeffrey A. Berman** | Partner

Los Angeles - Century City | Ext: 751541 (+1-310-201-1541)

[jberman@seyfarth.com](mailto:jberman@seyfarth.com)

On Jan 3, 2019, at 12:30 PM, Tsiliacos, Nicholas L. <[Nicholas.Tsiliacos@nlrb.gov](mailto:Nicholas.Tsiliacos@nlrb.gov)> wrote:

**[EXT. Sender]**

Good afternoon

Christian Rowley informs me that you are handling this case now while he is out of the state on a personal matter, and I am to contact you.

Do you plan on presenting any non-English speaking witnesses? If so, how many? What languages do they speak? Could they testify the first day only? Arranging for official translators is costly and under time restraints.

Also, I have asked the Union's attorney for the following regarding your letter of January 2, 2019, to Acting RD Kwon: the names of the "unnamed supervisors" who "promised five employees the ratification bonus if the Union did not represent them"; the names of the

Reply all | Delete Junk |

decertification petition, and c) distribute anti-union campaign literature, all during working time"; and finally, the names of the Quality Control employees and inspectors who "solicited signatures for the decertification petition and/or signed the petition".

I asked that I be informed forthwith so the Region can inform you.

Regards,

Nick  
510.671.3046

## Re: Foster Poultry Farms 32-RD-230993

Berman, Jeffrey A.

Fri 1/4/2019 1:50 PM

Deleted Items

To: Tsiliacos, Nicholas L. <Nicholas.Tsiliacos@nlrb.gov>;

"First day?" You expect this to go Thursday too? We really need the names Hope you can get them

Typos Courtesy of Apple

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Jeffrey A. Berman | Partner  
Los Angeles - Century City | Ext: 751541 (+1-310-201-1541)  
jberman@seyfarth.com

> On Jan 4, 2019, at 1:47 PM, Tsiliacos, Nicholas L. <Nicholas.Tsiliacos@nlrb.gov> wrote:

>

> [EXT. Sender]

>

> Hi

>

> The Union will have six Spanish speaking witnesses. So far, the Union attorney is showing resistance to the idea of the providing the names of the "unnamed supervisors" before the hearing. I am aware that Maria Lopez will bring Spanish speaking co-workers to the hearing. Whether they will actually testify, I suppose will be guided by the circumstances. Our office is in the process of getting confirmation for an official translator. However, if all goes according to plan, which it should, the translator will be available for the entire day beginning at 10:00 a.m. for the first day only.

>

> Nick

>

>

> -----Original Message-----

> From: Berman, Jeffrey A. [mailto:JBerman@seyfarth.com]

> Sent: Friday, January 04, 2019 1:31 PM

> To: Tsiliacos, Nicholas L. <Nicholas.Tsiliacos@nlrb.gov>

> Subject: Re: Foster Poultry Farms 32-RD-230993

>

> Nick. Two things. First any news from the union on witnesses or the need for a translator? Second, we understand that the Petitioner has several witnesses. Don't know if any of them need a translator. You may want to contact her,

>

> Typos Courtesy Of Apple

> \_\_\_\_\_

>

>

>

> Jeffrey A. Berman | Partner | Seyfarth Shaw LLP

> 2029 Century Park East | Suite 3500 | Los Angeles, California 90067-3021

> Direct: +1-310-201-1541 | Fax: +1-310-282-6986 jberman@seyfarth.com | [www.seyfarth.com](http://www.seyfarth.com)

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>

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## RE: Foster Poultry Farms 32-RD-230993



Tsiliacos, Nicholas L. &lt;Nicholas.Tsiliacos@nlrb.gov&gt;

Yesterday, 1:47 PM

Berman, Jeffrey A.

Reply all |

Inbox

You replied on 1/4/2019 1:50 PM.

Label: Seyfarth - Delete Inbox after 6 months (6 months) Expires: 7/3/2019 1:47 PM

[EXT. Sender]

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Nick

-----Original Message-----

From: Berman, Jeffrey A. [<mailto:JBerman@seyfarth.com>]

Sent: Friday, January 04, 2019 1:31 PM

To: Tsiliacos, Nicholas L. &lt;Nicholas.Tsiliacos@nlrb.gov&gt;

Subject: Re: Foster Poultry Farms 32-RD-230993

Nick. Two things. First any news from the union on witnesses or the need for a translator? Second, we understand that the Petitioner has several witnesses. Don't know if any of them need a translator. You may want to contact her,

Typos Courtesy Of Apple

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Jeffrey A. Berman | Partner | Seyfarth Shaw LLP

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Direct: +1-310-201-1541 | Fax: +1-310-282-6986 [jberman@seyfarth.com](mailto:jberman@seyfarth.com) | [www.seyfarth.com](http://www.seyfarth.com)

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On Jan 3, 2019, at 12:30 PM, Tsiliacos, Nicholas L.  
<Nicholas.Tsiliacos@nlrb.gov<mailto:Nicholas.Tsiliacos@nlrb.gov>> wrote:

[EXT. Sender]

Good afternoon

Christian Rowley informs me that you are handling this case now while he is out of the state on a personal matter, and I am to contact you.

Do you plan on presenting any non-English speaking witnesses? If so, how many? What languages do they speak? Could they testify the first day only? Arranging for official translators is costly and under time restraints.

Also, I have asked the Union's attorney for the following regarding your letter of January 2, 2019, to Acting RD Kwon: the names of the "unnamed supervisors" who "promised five employees the ratification bonus if the Union did not represent them"; the names of the "unnamed supervisors" who the Union alleges had knowledge that employees were "disparately allowed to electioneer against the Union, b) solicit signatures for the decertification petition, and c) distribute anti-union campaign literature, all during working time"; and finally, the names of the Quality Control employees and inspectors who "solicited signatures for the decertification petition and/or signed the petition".

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